## THE LIABILITY OF PUBLIC CORPORATIONS.

We take it to be a principle, now too well settled to need citation of authority, that public property is exempt from liability for debt unless by legislative enactment such liability is expressly placed upon it. Such seems to be the concurrent opinion of approved text-writers, and such the conclusion of our courts of last resort.

It appears, moreover, that the converse of this proposition is equally well established, to-wit: That where the law-making power has pledged certain property, and has expressly made it liable for any specific purpose, such liability *does* necessarily attach for the purpose, and to the extent of such enactment; and we respectfully submit that the several cases of *Eastern Lunatic Asylum* v. *Garrett*, 27 Gratt. 163; *Maia* v. *Eastern State Hospital*, 5 Va. Law Reg. 534; and *Phillips* v. *University of Virginia*, 5 Va. Law Reg. 466, instead of controverting these doctrines in any particular, as has been suggested (5 Va. Law Reg. 648), are themselves entirely in accord with the principles above enunciated.

In the case of *Eastern Lunatic Asylum* v. *Garrett* (*supra*), it was held that, in accordance with the authority expressly vested in it by the legislature, the Asylum had the right to purchase supplies for the use of its inmates, and to bind itself to pay for the same, out of the appropriation made by the State for that purpose; and, furthermore, that such contract, made within the scope of its authority, and for the purposes for which the institution was organized, *could be enforced by law*. As to the *means* by which such enforcement could be compelled the court is silent, but we submit that it does not necessarily follow, as is claimed (5 Va. Law Reg. 646), that the only method of such compulsion would be "by subjecting the property of the Asylum to the satisfaction of the judgment." On the contrary, we maintain that such method would not be available, in the absence of express legislative enactment to that effect.

As has been suggested, in a note by the editor (5 Va. Law Reg. 544), "It is possible, however, that since some of these institutions have an income derived from private patronage, in addition to the State annuity, such income might be sequestrated by proper judicial proceeding;" and such course seems to have been followed in this instance, and the judgment thereby satisfied.

In the case of *Maia* v. *Eastern State Hospital* (*supra*), the action was for damages for an alleged injury to one of the inmates of the institution, resulting, as was claimed, from the negligence of the officials in the performance of their public duties.

In its able opinion, by Judge Buchanan, the court says, that in determining the liability of a public corporation, in any particular case, "regard must be had to the objects for which the corporation was created;" and in distinguishing the principal case from *Eastern Lunatic Asylum* v. *Garrett* (*supra*)—the ruling in which case it distinctly approves—the court says the latter action

"Was to recover the value of property which the defendant had the right to purchase, for the maintenance of those entrusted to its care, and pay for out of the appropriation made for that purpose by the State; and the plaintiff's property having been converted to the use of the corporation for the same purpose for which it had the right to purchase it, it ought to have paid for it, and the court very properly held that an action would lie to compel it to do so.

"The directors in this case" (the *Maia Case*) "clearly had no right to pay damages for the grievance complained of out of any funds under their control. Those funds were appropriated by the State to pay the expenses of caring for and maintaining the inmates of the hospital, and not for paying damages resulting from the negligent management of those in charge of it. If such damages were chargeable on the funds, or property under the control of the directors, their payment might prevent the accomplishment of the very object for which the money was appropriated. The tax-payers might thus become insurers against the negligence of public officials, instead of being contributors to the support and maintenance of a great public charity. That an unfortunate inmate of the hospital should suffer from the negligence or misconduct of persons administering the powers of the corporation, or their agents or employees, is, indeed, a hardship, but we do not think that this hardship should be remedied by giving damages to such an one or his representatives at the expense of other inmates of the hospital, or of the tax-payers of the State."

Thus, by its approval of the rulings in the *Garrett Case*, and regarding the objects for which this corporation was created, the court, in the *Maia Case*, has again affirmed the doctrine that, acting within the scope of the authority given it by the legislature, a public corporation is liable for all contracts made in accordance with the objects for which it was created, and that such liability can be enforced against the funds contributed or appropriation made by the State to meet such legitimate liabilities. But it distinctly declares, for reasons most cogently presented, that even in such a case the property of the corporation could not be held liable to the satisfaction of a judgment, and that such satisfaction must be sought out of the means specially provided for that purpose.

Furthermore, the court herein distinctly reaffirms the established doctrine, that in no case is such corporation liable for contracts *ultra vires*, nor for the negligence of its officers, when acting in a governmental capacity; for in concluding the opinion in this case the court says:

"It seemed to be conceded in the argument that if the plaintiff could maintain his action and obtain judgment against the defendant he could not subject its buildings and grounds, or other property, to the satisfaction of the judgment, but would have to look to the legislature for payment. If this be so, as we think it is, it shows that this action will not lie against the defendant, for if the plaintiff has no right to compel the defendant to compensate him for the grievance complained of, it is clear that he has no cause of action against it, for as was said by Lord Holt in *White* v. *Ashby*, 1 Lead. Cas., 464, 483, 'It is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal.'" 5 Va. Law Reg. 541.

This last utterance of the learned court seems to have been a stumbling block in the path of some of our brethren, for whose opinions we have the highest respect, and therefore it is with some diffidence that we suggest that this language of the court was intended to apply only to the facts and circumstances of the case then under consideration.

The gravamen of the complaint, in the *Maia Case*, was that the plaintiff had suffered injury by reason of the negligence of the officers of the hospital, in the discharge of their public duty, and by reason of such neglect it was sought to hold the institution liable.

In the opinion of the court, which is supported by the overwhelming weight of authority, even if the contention of the plaintiff could have been established, the buildings and grounds of the institution could not have been held liable to the satisfaction of the judgment, *for lack of legislative authority to that effect;* nor could the appropriation made by the State, for the specific purpose of maintaining the inmates of the institution, have been subjected, for the reason that the object for which the corporation was created would thereby be frustrated.

But because such was the case, in this particular instance, where the action was *in tort*, and sounding in damages, it does not follow, as we respectfully submit, "that a duly authorized contract made by this hospital, or by any other purely public corporation in the State—for example the University of Virginia, the Virginia Military Institute, the several lunatic asylums, the Deaf, Dump and Blind Institution—is practically non-enforceable by law." 5 Va. Law Reg. 544. Nor do we think that authority can be found therein for the broad state-

ment that "a contract with a public corporation can't be enforced; that the property of the corporation can't be sold, and hence the contract affords no cause of action."

On the contrary, these very cases seem to establish, beyond any question, the fact that duly authorized contracts, where regard is had to the objects for which the corporation was created, *can be enforced by law.*

In the case of *Phillips* v. *University of Virginia*, 5 Va. Law Reg. 467, Judge Riely, in the opening sentences of that able opinion, says:

"It is a well settled rule that public property used for public purposes is not liable to sale for public debts. To allow it to be done would thereby annihilate the public uses. For this reason, public policy forbids a lien on public property. A lien upon property implies the right to sell it for the payment of the lien, but public property not being liable to be sold for the payment of debts, a mechanic's lien cannot be asserted upon it, *unless expressly authorized by law.*" (Italics ours.)

By clearest inference, it therefore follows, that if expressly authorized by law, any valid lien could be so asserted, and public property *could* be so sold.

In dealing with all public corporations, their rights and liabilities are measured by the Act which gives them birth, and by subsequent legislation, which must be explicit in order to restrict their rights, or to broaden their liabilities, which otherwise are well defined by public policy.

For example, in the *Phillips Case*, it appears, that by act of assembly, the issue of certain bonds by the University, was authorized, for the purpose of raising money for a specific object. To secure these bonds a deed of trust was, by similar authority, placed upon the property of the University; and should default be made in the payment of these bonds, the holders would have no need "to go to the legislature, and beg for their payment as a favor;" they could proceed under the deed of trust, and enforce their rights, since such a course has been duly authorized by law.

But because these bondholders, who have thus made a special and a valid contract with the State—to whom the property really belongs —could so proceed, in case of such default, does it logically follow that other creditors *who have no such contract* should be allowed likewise to proceed to subject her property to the payment of their debts?

We think such contention scarcely tenable, regarded from any standpoint.

Thus it would appear that the legislature can and does authorize

public corporations to make *enforceable contracts*; that it can and does extend or narrow the rights and liabilities of such corporations; that it can, and in some instances does, subject even their grounds and buildings to the payment of certain obligations, which they are authorized to contract, as it has done in the case of the contract between the University and its bondholders, but *as it did not do* in the case of the contractors and sub-contractors who undertook the restoration of its buildings.

Should a judgment be obtained against the University or other public corporation, upon any contract made within the scope of the authority vested in it, it is clear that such judgment would be valid, and capable of being enforced—not, however, as in case of a private corporation against all of its property, but only against such as a due regard to the objects for which it was created, would, for reasons of public policy, render expedient.

With all deference we submit, that the decisions in the several cases referred to, harmonize in principle and are upheld by reason and authority. While we recognize the hardship which this policy of the law may have wrought in individual instances, and which, if such be the case, it would seem can only be corrected by the legislature, still we are none the less prepared to concede the wisdom upon which it is founded, and the authority by which it is sustained.

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